

## Legal Services Corporation

## Pt. 1642

(iii) 18 U.S.C. 287 (False, Fictitious or Fraudulent Claims);

(iv) 18 U.S.C. 371 (Conspiracy to Commit Offense or Defraud the United States);

(v) 18 U.S.C. 641 (Public Money, Property or Records);

(vi) 18 U.S.C. 1001 (Statements or Entries Generally);

(vii) 18 U.S.C. 1002 (Possession of False Papers to Defraud the United States);

(viii) 18 U.S.C. 1516 (Obstruction of Federal Audit);

(ix) 31 U.S.C. 3729 (False Claims);

(x) 31 U.S.C. 3730 (Civil Actions for False Claims), except that actions that are authorized by 31 U.S.C. 3730(b) to be brought by persons may not be brought against the Corporation, any recipient, subrecipient, grantee, or contractor of the Corporation, or any employee thereof;

(xi) 31 U.S.C. 3731 (False Claims Procedure);

(xii) 31 U.S.C. 3732 (False Claims Jurisdiction); and

(xiii) 31 U.S.C. 3733 (Civil Investigative Demands).

(2) For the purposes of the laws listed in paragraph (a)(1) of this section, LSC shall be considered a Federal agency and a recipient's LSC funds shall be considered to be Federal funds provided by grant or contract.

(b) A *violation of the agreement* means:

(1) That the recipient has been convicted of, or judgment has been entered against the recipient for, a violation of any of the laws listed in paragraph (a)(1) of this section, with respect to its LSC grant or contract, by the court having jurisdiction of the matter, and any appeals of the conviction or judgment have been exhausted or the time for the appeal has expired; or

(2) An employee or board member of the recipient has been convicted of, or judgment has been entered against the employee or board member for, a violation of any of the laws listed in paragraph (a)(1) of this section with respect to a recipient's grant or contract with LSC by the court having jurisdiction of the matter, and any appeals of the conviction or judgment have been exhausted or the time for appeal has expired, and the Corporation finds that the recipient has knowingly or through

gross negligence allowed the employee or board member to engage in such activities.

### § 1640.3 Contractual agreement.

As a condition of receiving LSC funds, a recipient must enter into a written contractual agreement with the Corporation that, with respect to its LSC funds, it will be subject to the Federal laws listed in § 1640.2(a)(1). The agreement shall include a statement that all of the recipient's employees and board members have been informed of such Federal law and of the consequences of a violation of such law, both to the recipient and to themselves as individuals.

### § 1640.4 Violation of agreement.

(a) A violation of the agreement under § 1640.2(b)(1) shall result in the recipient's LSC grant or contract being terminated by the Corporation without need for a termination hearing. During the pendency of any appeal of a conviction or judgment, the Corporation may take such steps as it determines necessary to safeguard its funds.

(b) A violation of the agreement under § 1640.2(b)(2) shall result in the recipient's LSC grant or contract being terminated by the Corporation. Prior to such termination, the Corporation shall provide notice and an opportunity to be heard for the sole purpose of determining whether the recipient knowingly or through gross negligence allowed the employee or board member to engage in the activities which led to the conviction or judgment. During the pendency of any appeal of a conviction or judgment or during the pendency of a hearing, the Corporation may take such steps as it determines necessary to safeguard its funds.

## PART 1642—ATTORNEYS' FEES

Sec.

1642.1 Purpose.

1642.2 Definitions.

1642.3 Prohibition.

1642.4 Applicability of restriction on attorneys' fees.

1642.5 Accounting for and use of attorneys' fees.

1642.6 Acceptance of reimbursement from a client.

## § 1642.1

1642.7 Recipient policies, procedures and recordkeeping.

AUTHORITY: 42 U.S.C. 2996e(d)(6); Pub. L. 104-208, 110 Stat. 3009; Pub. L. 104-134, 110 Stat 1321, section 504(a)(13).

SOURCE: 62 FR 25864, May 12, 1997, unless otherwise noted.

### § 1642.1 Purpose.

This part is designed to insure that recipients or employees of recipients do not claim, or collect and retain attorneys' fees available under any Federal or State law permitting or requiring the awarding of attorneys' fees.

### § 1642.2 Definitions.

(a) *Attorneys' fees* means an award to compensate an attorney of the prevailing party made pursuant to common law or Federal or State law permitting or requiring the awarding of such fees or a payment to an attorney from a client's retroactive statutory benefits.

(b) *Attorneys' fees* do not include the following:

(1) Payments made to a recipient or an employee of a recipient for a case in which a court appoints the recipient employee to provide representation pursuant to a statute or court rule or practice equally applicable to all attorneys in the jurisdiction, and in which the recipient or employee receives compensation under the same terms and conditions as are applied generally to attorneys practicing in the court in which the appointment is made;

(2) Payments made to a recipient or an employee of a recipient pursuant to a grant, contract or other agreement by a governmental agency or other third party for representation of clients;

(3) Payments received as a result of sanctions imposed by a court for violations of court rules or practices, or statutes relating to court practice, including Rule 11 or discovery rules of the Federal Rules of Civil Procedure, or similar State court rules or practices, or statutes; and

(4) Reimbursement of costs and expenses from an opposing party or from a client pursuant to § 1642.6.

(c) An *award* is an order by a court or an administrative agency that the unsuccessful party pay the attorneys' fees

## 45 CFR Ch. XVI (10-1-99 Edition)

of the prevailing party or an order by a court or administrative agency approving a settlement agreement of the parties which provides for payment of attorneys' fees by an adversarial party.

(d) To *claim* attorneys' fees means to include a request for attorneys' fees in any pleading.

### § 1642.3 Prohibition.

Except as permitted by § 1642.4, no recipient or employee of a recipient may claim, or collect and retain attorneys' fees in any case undertaken on behalf of a client of the recipient.

### § 1642.4 Applicability of restriction on attorneys' fees.

(a) The prohibition contained in § 1642.3 shall not apply to cases filed prior to April 26, 1996, except that the prohibition shall apply to any additional related claim for the client made in such a case on or subsequent to April 26, 1996.

(b) Except as permitted in paragraph (a) of this section, the prohibition contained in § 1642.3 shall apply to any case undertaken by a private attorney on behalf of an eligible client when the attorney receives compensation from a recipient to provide legal assistance to such client under the recipient's private attorney involvement (PAI) program, judicare program, contract or other financial arrangement.

### § 1642.5 Accounting for and use of attorneys' fees.

(a) Attorneys' fees received by a recipient pursuant to § 1642.4(a) for representation supported in whole or in part with funds provided by the Corporation shall be allocated to the fund in which the recipient's LSC grant is recorded in the same proportion that the amount of Corporation funds expended bears to the total amount expended by the recipient to support the representation.

(b) Attorneys' fees received pursuant to § 1642.4(a) shall be recorded during the accounting period in which the money from the fee award is actually received by the recipient and may be expended for any purpose permitted by the LSC Act, regulations and other law applicable at the time the money is received.

## Legal Services Corporation

## § 1643.5

### § 1642.6 Acceptance of reimbursement from a client.

(a) When a case results in a recovery of damages or statutory benefits, a recipient may accept reimbursement from the client for out-of-pocket costs and expenses incurred in connection with the case, if the client has agreed in writing to reimburse the recipient for such costs and expenses out of any such recovery.

(b) A recipient may require a client to pay court costs when the client does not qualify to proceed *in forma pauperis* under the rules of the jurisdiction.

### § 1642.7 Recipient policies, procedures and recordkeeping.

The recipient shall adopt written policies and procedures to guide its staff in complying with this part and shall maintain records sufficient to document the recipient's compliance with this part.

## PART 1643—RESTRICTION ON ASSISTED SUICIDE, EUTHANASIA, AND MERCY KILLING

Sec.

1643.1 Purpose.

1643.2 Definitions.

1643.3 Prohibition.

1643.4 Applicability.

1643.5 Recipient policies and recordkeeping.

AUTHORITY: Pub. L. 105-12; 42 U.S.C. 2996f(b)(11).

SOURCE: 62 FR 67749, Dec. 30, 1997, unless otherwise noted.

### § 1643.1 Purpose.

This part is intended to ensure that recipients do not use any LSC funds for any assisted suicide, euthanasia or mercy killing activities prohibited by this part.

### § 1643.2 Definitions.

(a) *Assisted suicide* means the provision of any means to another person with the intent of enabling or assisting that person to commit suicide.

(b) *Euthanasia (or mercy killing)* is the use of active means by one person to cause the death of another person for reasons assumed to be merciful, regardless of whether the person killed consents to be killed.

(c) *Suicide* means the act or instance of taking one's own life voluntarily and intentionally.

### § 1643.3 Prohibition.

No recipient may use LSC funds to assist in, support, or fund any activity or service which has a purpose of assisting in, or to bring suit or provide any other form of legal assistance for the purpose of:

(a) Securing or funding any item, benefit, program, or service furnished for the purpose of causing, or the purpose of assisting in causing, the suicide, euthanasia, or mercy killing of any individual;

(b) Compelling any person, institution, or governmental entity to provide or fund any item, benefit, program, or service for such purpose; or

(c) Asserting or advocating a legal right to cause, or to assist in causing, the suicide, euthanasia, or mercy killing of any individual.

### § 1643.4 Applicability.

(a) Nothing in §1643.3 shall be interpreted to apply to:

(1) The withholding or withdrawing of medical treatment or medical care;

(2) The withholding or withdrawing of nutrition or hydration;

(3) Abortion;

(4) The use of items, goods, benefits, or services furnished for purposes relating to the alleviation of pain or discomfort even if they may increase the risk of death, unless they are furnished for the purpose of causing or assisting in causing death; or

(5) The provision of factual information regarding applicable law on assisted suicide, euthanasia and mercy killing. Nor shall §1643.3 be interpreted as limiting or interfering with the operation of any other statute or regulation governing the activities listed in this paragraph.

(b) This part does not apply to activities funded with a recipient's non-LSC funds.

### § 1643.5 Recipient policies and recordkeeping.

The recipient shall adopt written policies to guide its staff in complying with this part and shall maintain